

CRM-M-41363-2022
Date of decision: 23.04.2024

...PETITIONER

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

Present: Mr. Nitin Sachdeva, Advocate
for the petitioner.

None for respondent no.2-complainant.

HARPREET SINGH BRAR J. (ORAL)

1. The present petition is the second petition preferred under Section 482 Cr.P.C. seeking quashing of the FIR No. 0021 dated 12.01.2022 (Annexure P-1) registered under Sections 406, 498-A, 323 and 506 read with Section 34 of the Indian Penal Code at Police Station- Quilla, Panipat, Karnal along with the final report dated 06.05.2022 (Annexure P-2) under Section 173 Cr.P.C. and all the consequential proceedings arising therefrom qua the petitioner.

2. A Co-ordinate Bench of this Court, on the previous date of hearing, i.e., 24.07.2023, issued notice of motion to the respondents. In consequence, learned State counsel is present before this Court, whereas, no one has put in appearance on behalf of respondent no.2 despite the service of the said notice being complete. This Court is thus left with no other option but to proceed with the hearing and decide the matter accordingly.

3. The facts, in brief, are that the FIR (supra) was registered on the basis of a complaint filed by respondent no.2-wife, wherein, it was alleged that the marriage of respondent no.2 was solemnized with the petitioner on 09.10.2021. On the same very day, the petitioner and his family started harassing the complainant for dowry and demanded Rs.2,00,000/- from her. The stay of respondent no.2 at her matrimonial home lasted only for 15 days, i.e., till 23.10.2021.

4. Learned counsel for the petitioner *inter alia* contends that on 09.10.2021, just the engagement ceremony of the petitioner and respondent no.2 took place and marriage has never been solemnized between them. He further submits that the offence under Section 323 IPC cannot be made out since there is no medical evidence to support the claim of respondent no.2. It is also contended that respondent no.2 did not stay at the house of the petitioner for 15 days as alleged by her since their marriage was not solemnized and that respondent no.2 does not possess even an iota of evidence to prove the solemnization of their marriage. He vociferously contends that since the factum of marriage is not proved between the petitioner and respondent no.2, the offences mentioned in the impugned FIR cannot be made out. A reference is made to an order dated 19.01.2022, passed by learned Additional Sessions Judge, Panipat, vide which, the petitioner was granted the concession of regular bail, especially para No.6 of the said order, which reads as follows:-

“6. A perusal of the case file shows that allegedly the applicants are husband and mother-in-law of complainant. On the other hand, prima facie the solemnization of marriage with complainant is disputed by applicants. The IO of the case could only adduce photographs of the ring ceremony of the complainant with applicant Narinder, whereas no prima facie proof of marriage is adduced on the case file. The ld. PP for the State argued that marriage was solemnized as per custom of the village but no such custom is prima facie pleaded or proved on the case file.

*Thus, very solemnization of marriage of complainant with applicant Narinder is doubtful. Admittedly, applicant No. 2 is old aged lady and is bed ridden. Same prima facie makes it improbable that she indulged in any demand of dowry and inflicting of cruelty upon complainant. Moreover, as per the law laid down in celebrated case of **Arnish Kumar vs. State of Bihar & others delivered by Hon'ble Supreme Court on 2nd July, 2014**, Hon'ble Apex Court had held that if the accused joins the investigation and co-operates with the police in an offence punishable for the imprisonment of seven years or less, he should not be arrested. The applicants have undertaken to join the investigation and to co-operate with the police. The main grievance of the complainant as well as prosecution is that applicants have not joined in investigation. In such circumstances, without commenting anything on merits of case, it will be in the interest of justice, if applicants are directed to join investigation and in the meantime are admitted to interim bail”.*

5. Learned state counsel contends that the present petition being the second petition preferred under Section 482 Cr.P.C. seeking quashing of the same FIR (supra), is not maintainable as a similar petition bearing No. CRM-M-6427-2022 was dismissed as withdrawn on 17.02.2022. He further submits that whether the said marriage was solemnized or not is a matter of evidence which is yet to be proved. Further submitted that there is a specific averment made by respondent no.2-complainant regarding the solemnization of marriage as clearly mentioned in her written complaint dated 03.01.2022, relevant part of which is reproduced herein below:-

“I Jaspal Kaur wife of Narinder Nanchal at present resident of House No.458/7, Near Narayan Singh Gurudwara, Ward No.007, Panipat. That my marriage was solemnized with above said Narinder Nanchal on dated 09.10.2021 at Hotel Highway, GT Road, Panipat and this was my second marriage. That from my earlier marriage, there is one son namely Gursehaj having age 3 months. This marriage was attended by 10-12 persons from the side of Narinder Nanchal and 10-15 persons were there from my side. That after the marriage, in the evening of dated 09.10.2021, I went to my matrimonial home along with husband Narinder Nanchal.”

6. I have heard the learned counsel for the parties and perused the record of the case. This Court is of the opinion that whether or not the marriage between the petitioner and respondent no.2 was solemnized would be a moot question to be determined by the learned trial Court on the basis of the evidence adduced by the respective parties. As such, any interference by this Court with regards to factual questions is impermissible in law as it is the sole prerogative of the trial Court to determine the disputed questions of fact after examining the evidence on record. Thus, disputed questions of facts cannot be delved into by this Court at this stage while dealing with a case of quashing of FIR (supra) under Section 482 of the Cr.P.C.

7. Pertinently, a two Judge Bench of the Hon'ble Supreme Court in **HMT Watches Ltd Vs. M.A. Abida (2015) 11 SCC 776** has held as under: -

“10..... Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed questions of fact in a petition under section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties.”

8. A two Judge bench of the Hon'ble Supreme Court in the **Rathish Babu Unnikrishnan Vs. State (Govt. of NCT) 2022 SCC Online SC 513**, speaking through Justice Hrishikesh Roy, observed as under:

“17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.”

9. In **Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited (2016) 10 SCC 458**, a two Judge bench of the Hon’ble Supreme Court, speaking through Justice Adarsh Kumar Goel, made the following observations:

“17. As is clear from the above observations of this Court, it is well settled that while dealing with a quashing petition, the Court has ordinarily to proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at this stage. The court considering the prayer for quashing does not adjudicate upon a disputed question of fact.”

10. In view of the discussion above, this Court cannot appreciate the probable defence set up by the petitioners at this stage. Accordingly, the present petition is dismissed.

11. Pending miscellaneous applications, if any, are also disposed of accordingly.

April 23, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No